payable on demand then presentment must be made within a reasonable time, subject to section 46. If it is not presented, the drawer shall be discharged. Subsection (2) provides that presentment for payment is dispensed with (a) where after the exercise of reasonable diligence presentment cannot be effected. The fact that the holder has reason to believe that the bill will, on presentment, be dishonoured, does not dispense with the necessity of presentment.

Counsel for the plaintiff relied on the English Bill of Exchange Act, 1882, wherein sections 45, 52(1) and 87(1) are relevant. These sections are in *pari materia* with the relevant sections in our Ordinance and similarly numbered. In this regard, *Halsbury's* Law of England, 3rd edition, Volume 3, page 198, at paragraph 338, says as follows: —

"A cheque is a bill drawn on a banker payable on demand, and should be presented for payment within a reasonable time of its issue. But failure so to present it does not discharge the drawer, as a right of action subsists against him, and is only barred by the operation of the Limitation Act, 1939."

The effect of non-presentment is discussed in the same paragraph thus: —

"Where, however, a cheque is not presented within a reasonable time of its issue, and the drawer or the person on whose account it is drawn had the right at the time of such presentment as between him and the banker to have the cheque paid and suffers actual damage through the delay, he is discharged to the extent of such damage, that is to say to the extent to which such drawer or person is a creditor of such banker to a larger amount than he would have been had such cheque been paid."

I am of the opinion that it is lawful for the plaintiff to obtain judgment for the amount of the two cheques, *i.e.* for $801.30. The appeal is therefore allowed and judgment is given for the plaintiff with costs.

Appeal allowed.

Solicitors: *Atma Singh Gill & Co.; P. S. Mariam & Co.*

LOW KWYE YING v. CHAN YEK YING

[O.C.J. (Sharma J.) October 16, 1970]

[Malacca — Civil Suit No. 117 of 1970]

Landlord and Tenant — Covenant for quiet enjoyment — Statutory tenant — Breach of covenant by landlord — Application for injunction and declaration — Temporary injunction.

In this case the plaintiff sought an injunction and declaration against the defendant. It appeared that the plaintiff was a tenant of the ground floor of the premises of which the defendant was the landlord and owner. The plaintiff had throughout the period of her tenancy the use of water, the kitchen, the bathroom and the toilet on the ground floor. The defendant however took steps to cut off the water supply to the plaintiff by locking the water tap and she altered the premises to cut off the rear portion of the ground floor from the portion in the occupation of the plaintiff, with the result that the plaintiff and her family were deprived of the use of the bathroom, the kitchen and the toilet.

Held: there had been a breach by the defendant of the covenant for quiet enjoyment and in the circumstances a temporary injunction would be issued against her to restore the *status quo ante* until the suit was finally disposed of.

Cases referred to:-

(1) *Lavender* v. *Betts*, (1942) 167 L.T. 70.

(2) *Manchester etc. Railway Co.* v. *Anderson*, [1898] 2 Ch. 394.

(3) *Booth* v. *Thomas*, [1926] 1 Ch. 397.

(4) *Morris* v. *Edgington*, (1810) 3 Taunt. 24; 128 E.R. 10.

(5) *Sanderson* v. *Mayor of Berwick-Upon-Tweed*, (1884) 13 Q.B.D. 547 at p. 552.

(6) *London & Blackwall Railway Co.* v. *Cross*, (1886) 31 Ch. D. 354 at p. 369.

(7) *Krehl* v. *Burrell*, (1877) 7 Ch. D. 551.

(8) *McManus* v. *Cooke*, (1887) 35 Ch. D. 681.

(9) *Shaw* v. *Stenton*, (1858) 2 H & N 858; 157 E.R. 353.

(10) *Allport* v. *Securities Corporation*, (1895) 64 L.J. Ch. 491.

(11) *Brauns* v. *Glesize*, 130 Ind. 167.

CIVIL SUIT.

S. C. Navarednam for the plaintiff.

Miss Tan Chee Lan for the defendant.

Sharma J.: The principal claim of the plaintiff in this suit is for an injunction and a declaration. The facts are not very much in dispute. The plaintiff is the tenant of the ground floor of premises No. 139 Jalan Bunga Raya of which the defendant is the landlord and the owner. The defendant occupies the first floor of the same premises. The plaintiff, throughout the period of her tenancy, has had the use of water, the kitchen, the bathroom and the toilet on the ground floor. On or about the 7th day of March 1970 the defendant cut off the water supply to the plaintiff by locking up the water tap. The result of this was obvious. The plaintiff from that moment onwards was forced to get her supplies of water from elsewhere and it was fortunate for her that she was able to do so from the house next door, *i.e.* premises No. 137 Jalan Bunga Raya. On the 4th day of April 1970 the defendant demolished the bathroom and on the 31st day of May 1970 constructed a door on the ground floor whereby she cut off the rear portion of the ground floor from the portion in the physical occupation of the plaintiff. The defendant locked this door which meant that the plaintiff and all the members of her family were deprived of the use of the bathroom, the kitchen and the toilet. These basic facts are not denied by the defendant. Various affidavits have been filed in support and in opposition to the motion. The defendant has tried to explain in those affidavits the reasons for her conduct and she has alleged that there were various acts of annoyance on the part of the plaintiff or her children which alone induced her to do what she had ultimately done. I may pause here and say that all those acts of annoyance or even threats to the safety and life of the defendant are not really very material for the purposes of determination of the real question involved in this application. The defendant should have sought proper redress in respect of those acts attributed to the plaintiff and which she now complains of and which she says can excuse her own conduct. If a wrong had been done by the plaintiff it did not thereby follow that another wrong done by the defendant was justifiable on that ground.

The defendant's own husband, who was cross-examined by the plaintiff's counsel on the affidavit affirmed by him on the 14th October 1970, very candidly and truthfully told the court that he in fact did advise her not to do what she had done but his wife seemed to have reasons of her own to pursue her intentions to their fulfilment. The plaintiff being a tenant of the defendant it must follow that a covenant for quiet enjoyment was implied in her tenancy. The plaintiff has had the right to the use of water and the facilities of the kitchen, the bathroom and the toilet all these years and the continued and undisputed use of those facilities formed part of her right to quiet enjoyment of the premises. Where the quiet enjoyment of the premises by the tenant is interrupted by the act of the landlord, the tenant is entitled to come to court and seek an injunction. I have been told and the counsel for both parties agree that the premises in question are rent controlled premises. A notice to quit has been served upon the plaintiff but that does not alter the situation. The plaintiff on the expiry of the notice became the statutory tenant of the defendant and she as a statutory tenant is equally entitled to the benefit of the implied covenant for quiet enjoyment. *Lavender* v. *Betts*[1] was a case in which the windows and doors were removed by the landlord in an attempt to persuade the tenant to vacate and it was held that this was a breach by the landlord of the covenant for quiet enjoyment. Cutting off the water supply was undoubtedly an act on the part of the defendant whereby she as the landlord became in breach of the covenant for quiet enjoyment. There may be instances when there is just or sufficient cause for breach of a covenant for quiet enjoyment as, for example, when some necessary repairs have to be effected. If the tenant has the rights to enjoy the supply of essential services like water or electricity, or to have the use of facilities like the toilet, the bathroom or the kitchen, there is cast a duty on the landlord to allow and let the tenant continue to enjoy those services and facilities unless there is some just and sufficient cause which may entitle the landlord to interrupt the use of those facilities. Any breach of duty by him entitles the tenant to get redress from the court either by way of an injunction or damages or by such other relief as may be adequate in the circumstances of the case. In *Hill & Redman* on the Law of Landlord & Tenant (13th Edition) at page 179 it is stated:

> "The covenant for quiet enjoyment is an assurance against interruption in possession of the thing demised. It is an undertaking that the tenant shall have the property unfettered by the assertion of any right which interferes with its ordinary and lawful enjoyment."

Again at page 185 in the same work it is stated:

> "To constitute a breach of the covenant, there must be some physical interference with the enjoyment of the demised premises.... If the act causes physical interference with the demised premises, there is a breach of covenant notwithstanding that the act itself is done off the premises;..."

Structural injury to the premises or obstruction of a way demised with the premises are instances of acts of interference which have been held to amount to a breach of the covenant. (See *Manchester etc. Railway Co.* v. *Anderson*,[2] *Booth* v. *Thomas*[3] and *Morris* v. *Edgington*.[4] Fry L.J. in the case of *Sanderson* v. *Mayor of Berwick-Upon-Tweed*[5] said:

> "... it appears to us to be in every case a question of fact whether the quiet enjoyment of the land has or has not been interrupted; and where the ordinary and lawful enjoyment of the demised land is substantially interfered with by the acts of the lessor, or those lawfully claiming under him, the covenant appears to us to be broken, although neither the title to the land nor the possession of the land may be otherwise affected."

The very first principle of injunction law is that we do not obtain injunctions to restrain actionable wrongs for which damages are the proper remedy. (See *London & Blackwall Railway Co.* v. *Cross*[6]). The issue of a temporary injunction is governed by the same principles as the granting of a permanent injunction at a trial of a case. Where the principal relief in the suit is for a permanent or perpetual injunction, an order granting a temporary injunction should only be made where the granting of an injunction is not only the appropriate relief but where it is in addition also established that unless the defendant is restrained forthwith by a temporary injunction, irreparable injury or inconvenience may result to the plaintiff before the suit is decided upon its merits. Where the injuries are of so serious or material a character that the restoration of things to their former condition is the only remedy which will meet the requirements of the case or where the defendant has been guilty of a sharp practice or unfair conduct, a mandatory injunction is normally issued notwithstanding the amount of inconvenience to the other party. (See *Krehl* v. *Burrell*,[7] and *McManus* v. *Cooke*[8]).

There can be no doubt that the plaintiff has been put to a lot of harassment and inconvenience and that the necessities of life like the use of water and the facilities of the toilet etc. have been deprived her by the wilful conduct of the defendant. An injury of such a nature is certainly not an injury which can be compensated for by damages. The plaintiff seems to be lucky in being able to get a good neighbour who was kind enough to allow her the use of water. She was fortunate enough to rent a room in the next-door premises but if this good fortune did not befriend her, her plight would have been miserable and beyond redress. Only an order restoring her to the position which existed and which she enjoyed before the wrongful act of the defendant was committed is capable of doing any justice to her. A breach of covenant for quiet enjoyment has quite often been restrained by an injunction and where the nature of the case so requires by a mandatory injunction. (See *Shaw* v. *Stenton*[9] and *Allport* v. *Securities. Corporation*[10]).

A breach of covenant occurs when there is a substantial interference with the enjoyment of the premises even if it does not amount to dispossession. The case of *Brauns* v. *Glesize*[11] is referred to in *Row's* Treatise on the Law of Injunctions (Third Edition) Volume 1, at page 807 (I cannot say whether the reference quoted is correct as it sometimes happens that wrong references are found in some of the text-books). In this case it seems to have been held that where the tenant of an apartment by consent of the owner of the house put in water to his apartment, his right to re-

ceive water through the main pipes was not a mere licence revocable at the will of the owner of the premises and that a mandatory injunction could be issued to compel the owner to permit the free flow of water through the main pipes which the owner had stopped.

In the granting of a mandatory and interlocutory injunction the court has to exercise a judicial discretion and weigh the amount of damage done or threatened to be done to the plaintiff and compare it with the damage which the granting of an injunction would inflict upon the defendant, but in the first instance the court has to consider the plaintiff's case and the rights which have been interfered with and the court is bound to protect those rights unless by doing so it will inflict such hardship upon the defendant as may amount to injustice. Bearing that in mind I do not think any injustice will be done to the defendant if the parties are put back to the same position which they occupied before March 1970. An injunction is granted to restore *status quo ante* and it is that which I propose to do. In the circumstances the defendant is hereby restrained and an injunction is issued against her. The defendant is ordered to unlock the water tap forthwith and to open the door leading to the air-well, the kitchen, the bathroom and the toilet and allow the plaintiff to have free access to the toilet, bathroom and the kitchen. She is further ordered to allow the free flow of water in the water taps. This order and the injunction will remain effective only until such time as this suit is finally decided. The parties will have liberty to apply. The costs of this application will be paid by the defendant. I further direct that an early date for the hearing of the suit be fixed.

Injunction granted.

Solicitors: *Koh Kim Leng & Co.; Tan Chee Lan & Co.*

CHANDRASEKARAN & ORS. v. PUBLIC PROSECUTOR

[A.Cr.J. (Raja Azlan Shah J.) November 24, 1970]

[Kuala Lumpur — Criminal Appeal No. 77 of 1970]

Bribery and Corruption — Abetment of offences under the Act — Conspiracy — Evidence Ordinance, 1950, s. 10 — Prevention of Corruption Act, 1961, ss. 41(c), 11.

Bribery and Corruption — Evidence of a co-accused — Need for corroboration — Evidence relied on to provide corroboration — Prevention of Corruption Act, 1961, s. 19.

Bribery and Corruption — Cautioned statement of accused — Statement obtained by compulsion — Whether statements admissible if they lead to discovery of fact — Evidence Ordinance, 1950, s. 27 — Prevention of Corruption Act, 1961, s. 15.

Criminal Law and Procedure — Statement of witness to police — Whether accused entitled to copy of statement — Criminal Procedure Code (Cap. 6), s. 113(i).

Evidence — Conduct of accused — Whether admissible — Expert evidence — Admissibility of typewriting evidence — Evidence Ordinance, 1950, ss. 8 and 45.

This was an appeal against the conviction of the appellants on charges under the Prevention of Corruption Act, 1961. The evidence showed that there was a conspiracy to defraud the Government by means of forged vouchers. The appellants were charged with and convicted of abetment of the offence of defrauding the Government. On appeal it was argued, *inter alia:* (1) the learned president was wrong in treating a witness who had been originally charged with the appellants and who had given evidence under section 19 of the Prevention of Corruption Act, 1961, as a "peripheral accomplice"; (2) there was no or insufficient corroboration of the evidence of the witness; (3) the statements made by the second appellant which had been rejected by the learned president on the ground that they had been obtained by compulsion, was wrongly admitted under section 27 of the Evidence Ordinance; (4) typewritng evidence was wrongly admitted in this case; (5) evidence of the subsequent conduct of the second appellant was wrongly admitted; (6) the learned president was wrong in denying the first appellant his statutory right to a copy of a statement by a witness to the police for the purpose of cross-examination.

Held, dismissing the appeal: (1) as the witness had given evidence against a co-accused in the hope of receiving a pardon, his evidence must be closely scrutinized and must meet the twin tests of credibility and corroboration, i.e. he has to satisfy the court not only that his evidence is in general credible but also that there is independent corroboration in material particulars;

(2) although the learned president had appeared to treat the witness as a peripheral accomplice he in fact treated him as an accomplice and stressed the need for corroboration. The learned president had not misdirected himself in the law and there was no irregularity, but if there was, such irregularity had not occasioned any failure of justice;

(3) the evidence of the witness in this case fully incriminated the first appellant and there was also in this case sufficient evidence in corroboration connecting or tending to connect the first appellant with the crime;

(4) the statement made by the second appellant relating to the discovery of the typewriter was admissible under section 27 of the Evidence Ordinance;

(5) the expert evidence on typewriting was admissible in this case under section 45 of the Evidence Ordinance;

(6) evidence of the subsequent conduct of the second appellant was admissible under section 8 of the Evidence Ordinance;

(7) as the learned president had referred to the police statement of the witness and had come to the conclusion that there was no material for serious challenge to the credibility or reliability of the witness, he had rightly rejected the application for a copy of the statement to be supplied to the first appellant.

Cases referred to:-

(1) *Hussain Umar* v. *Dalipsinghji* A.I.R. 1970 S.C. 5.
(2) *Seah Chay Tee* v. *Public Prosecutor* [1948] M.L.J. 77.
(3) *Daud bin Awang Ngah* v. *Public Prosecutor* [1958] M.L.J. 168.
(4) *Tan Cheng Seng & Anor.* v. *R.* [1948] M.L.J. 148.
(5) *Seet Ah Ann* v. *Public Prosecutor* [1950] M.L.J. 293.
(6) *Sarjit Singh* v. *State of Punjab* [1970] Cr. L.J. 944.
(7) *Subramaniam* v. *Public Prosecutor* [1956] M.L.J. 220.
(8) *Mawaz Khan* v. *R.* [1967] 1 All E.R. 80.
(9) *R.* v. *Baskerville* [1916] 2 K.B. 658.
(10) *Public Prosecutor* v. *Err Ah Kiat* [1966] 1 M.L.J. 9.
(11) *Pulukuri Kottaya* v. *Emperor* (1947) 48 Cr. L.J. 533.
(12) *Hanumanth* v. *State of Madhya Pradesh* A.I.R. 1952 S.C. 343.
(13) *Manabendra Nath Roy* v. *Emperor* A.I.R. 1933 All. 498, 501.
(14) *S.H. Jhabwala* v. *Emperor* A.I.R. 1933 All. 690, 705.
(15) *Bacha Babu* v. *Emperor* A.I.R. 1935 All. 162, 169.